



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

ST LUKE'S EPISCOPAL HOSPITAL
6519 FANNIN
HOUSTON TX 77030

Respondent Name

LIBERTY MUTUAL FIRE INSURANCE

Carrier's Austin Representative Box

Box Number 01

MFDR Tracking Number

M4-98-3903-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The judgment of the Third Court of Appeals has become final and effective that the Acute Care Inpatient Hospital Fee Guideline (per diem rates) has been declared void. Due to the finality of the judgment of the Third Court of Appeals, a hospital may resubmit specific bills for acute care, inpatient hospital services if the services covered by the bills were provided on or after December 6, 1995." "Attached you fill our claim for **[Claimant]**, **DOS 11/27/96-12/01/96** for **\$21,568.95**. We are requesting that this claim be reprocessed for additional payment per the judgement [sic] of December 6, 1995."

Amount in Dispute: \$17,388.95

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "We base our payments on the Texas Fee Guidelines and the Texas Workers' Compensation Commission Acts and Rules." "This provider is contracted with Liberty Mutual's PPO, healthcare Compare/Affordable. As per the contractual agreement, inpatient hospital services should be paid at the lesser of the PPO per diem or the amount allowable per state guidelines less 5%." "This stay was reimbursed at the reasonable surgical per diem rate of \$1100/day with application of the additional PPO discount."

Response Submitted by: Liberty Mutual, 2875 Browns Bridge Road, Gainesville, GA 30504

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
November 27, 1996 through December 1, 1996	Inpatient Hospital Services	\$17,388.95	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the

procedures for resolving medical fee disputes.

2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on June 28, 1997.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - C-Negotiated Contract.
 - PA-Affordable Healthcare Compare.
 - N-Not documented.
 - Z612-This document outlines reduction of charges taken as a result of your contract.

Findings

1. Review of the submitted explanation of benefits finds that the insurance carrier reduced or denied disputed services using code "C-Negotiated Contract," "PA-Affordable Healthcare Compare," and "Z612-This document outlines reduction of charges taken as a result of your contract." 28 Texas Administrative Code §133.304(d), effective February 20, 1992, 17 *Texas Register* 1105, requires that "If the reductions in payment are limited to reductions by explicitly stated fee guideline or negotiated contract amounts, the insurance carrier shall stamp on the bill the following information, or submit a notice of medical payment dispute: "The reductions in payment are made according to the Texas Workers' Compensation Commission established fee guidelines (payment exception codes "F" or "B") or negotiated contract (payment exception code "C"). If you have questions contact: [name of auditor or adjuster] at [telephone number with area code]." Review of the submitted information finds no documentation to support that the insurance carrier submitted the required information to the provider. No documentation was found to support a contractual agreement between the parties to this dispute. The Division finds that the respondent has not met the requirements of §133.304(d). Therefore, the disputed services will be reviewed per applicable Division rules and fee guidelines.
2. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
3. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."
4. Review of the submitted documentation finds that:
 - The requestor asks to be reimbursed the full amount of the billed charges in support of which the requestor states "The judgment of the Third Court of Appeals has become final and effective that the Acute Care Inpatient Hospital Fee Guideline (per diem rates) has been declared void. Due to the finality of the judgment of the Third Court of Appeals, a hospital may resubmit specific bills for acute care, inpatient hospital services if the services covered by the bills were provided on or after December 6, 1995." "Attached you fill our claim for [Claimant], DOS 11/27/96-12/01/96 for \$21,568.95. We are requesting that this claim be reprocessed for additional payment per the judgement [sic] of December 6, 1995."
 - In numbered paragraph 4 of St. Luke's Response to TWCC Advisory 98-01, the requestor asserts " The request for reimbursement does not provide for payment of a fee in excess of the fee charged for similar treatment of an individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. Yet in numbered paragraph 1, the requester states, in pertinent part, that "St. Luke's discount rates for workers' compensation and managed care contracts are as follows:...

Workers' Compensation... Managed Care Contracts...

1996 47.8%

1996 41.6%

1997 50%

1997 45.3%"

The requestor is seeking reimbursement at 100% of the billed charges for the services in dispute, or in the alternative 97% of fees charged. Given that the requestor states that it discounted its other workers' compensation and managed care contracts services by 47.8% and 41.6% respectively during 1996, the same year that the disputed services were performed, the Division finds that the requestor has not supported its assertion that the request for reimbursement does not provide for payment of a fee in excess of the fee charged for similar treatment of an individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf.

- The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

12/20/11

Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.